

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW OFFICE OF
THE CHIEF ADMINISTRATIVE HEARING OFFICER**

UNITED STATES OF AMERICA,)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
)	
v.)	OCAHO Case No. 99A00032
)	
SOUTHERN EXCAVATION)	Judge Robert L. Barton, Jr.
CORPORATION, INC.,)	
Respondent.)	
)	

**FINAL DECISION AND ORDER GRANTING COMPLAINANT’S
MOTION TO DEEM REQUESTS FOR ADMISSION AS ADMITTED AND
COMPLAINANT’S MOTION FOR DEFAULT JUDGEMENT**
(August 17, 1999)

I. Procedural History

On April 5, 1999, Complainant filed a Complaint against Respondent alleging violations of Section 274A of the Immigration and Nationality Act, as amended (Act). On April 7, 1999, a copy of the Complaint and the Notice of Hearing on Complaint Regarding Unlawful Employment (Notice of Hearing) were mailed by the Office of the Chief Administrative Hearing Officer to the Respondent by certified mail, return receipt requested. The envelope that was mailed to Respondent was returned to the Court unopened, stamped “unclaimed” and “returned.”

The Court, pursuant to 28 C.F.R. Section 68.3(c), ordered Complainant to effectuate service of the Complaint on Respondent. In a letter dated June 8, 1999, Complainant’s counsel forwarded to the Court the original and two copies of a Certificate of Service evidencing personal service on Respondent of the Complaint, including all attachments and enclosures, on June 1, 1999. The Certificate of Service is signed by Linda Baird as “wife of co-owner.”

On July 16, 1999, Complainant filed a motion for default judgement or in the alternative for an order to show cause. In a Declaration of Counsel dated July 12, 1999, which was attached to its motion for default judgement, counsel for Complainant stated that on June 1, 1999, Respondent was served with the complaint and all attachments and enclosures, including the Rules of Practice and

Procedure¹ and the Notice of Hearing, which advised Respondent that it must file its Answer within thirty (30) days of receipt of the Complaint. Consequently, on July 21, 1999, I issued an Order Granting Complainant's Motion for an Order to Show Cause, directing Respondent, not later than August 13, 1999, to file with the Court and serve on Complainant a written response explaining why it had not filed a timely answer to the complaint and why a default judgement should not be entered.

I also granted Complainant's separately filed motion for an order requiring Respondent to show cause why Complainant's request for admissions, which Respondent had failed to answer, should not be deemed admitted. However, to this date Respondent has failed to file any response to the complaint or my show cause order.

II. Discussion

With respect to Complainant's motion to deem the requests for admission as admitted, Respondent has not only failed to answer the requests for admissions, but has failed to respond to the motion or the show cause order. Therefore, pursuant to 28 C.F.R. § 68.21 (1998), an Administrative Law Judge may deem admitted matters that are the subject of unanswered requests for admission. See United States v. Hudson Delivery Service, Inc., 7 OCAHO 368 (1999). Indeed, the Rule itself provides that each matter of which an admission is requested is admitted unless the party to whom the admissions are directed serves on the requesting party an answer or an objection. See 28 C.F.R. § 68.21(b). Therefore, since Respondent has failed to object or respond in any way to the requests for admission, they are deemed admitted.

With respect to the failure to file an answer to the complaint, as was explained in the Show Cause Order, the Rules of Practice require a respondent to serve an answer to the complaint and provide that failure to do so shall constitute a default. 28 C.F.R. § 68.9. The Rules also provide that a party shall be deemed to have abandoned a request for hearing if the party fails to respond to orders issued by the Administrative Law Judge. 28 C.F.R. § 68.37(b). Failure to respond to an order to show cause invites a judgment of default, especially where, as here, it appears that Respondent has ignored the Court's order and de facto has abandoned the request for a hearing. See United States of America v. Broker's Furniture and Manufacturing, Inc., et. al., 5 OCAHO 789 (1995); United States v. Hosung Cleaning Corp., 4 OCAHO 681 (1994). Even in cases where they appeared without counsel, parties that failed to obey Judges' orders were found to have abandoned their requests for hearing or to have abandoned their complaints. United States v. Erlina Fashions, Inc., 4 OCAHO 656 (1994); Holquin v. Dona Ana Fashions, 4 OCAHO 605 (1994); Brooks v. Watts Window World, 3 OCAHO 570 (1993); Speakman v. Rehabilitation Hospital of South Texas, 3 OCAHO 476 (1993); Palancz v. Cedars Medical Center, 3 OCAHO 443 (1992).

Here, the complaint was properly served on the Respondent by leaving a copy at the principal

¹ Certain portions of Part 68 of Title 28 of the Code of Federal Regulations have been amended. References to those amended portions of Part 68 are to the interim rule published in the Federal Register at Vol. 64, no. 29, page 7066. References to those portions not affected by the interim rules are to the 1998 volume of the Code of Federal Regulations.

office or place of business of the Respondent. See 28 C.F.R. 68.3(a)(2) (1998). Given the Respondent's failure to answer the Complaint or take any other action to defend its interests in this matter, I must conclude that Respondent has abandoned its Request for Hearing. Respondent is in default not only for failure to answer the Complaint, but also for failure to respond to the Show Cause Order. See 28 C.F.R. §§ 68.9(b) and 68.37(b)(1).

III. Findings, Conclusions and Order

1. Complainant's Motion for Default Judgment is granted;
2. I find that each and every paragraph of the Complaint, including the prayer for relief, has been admitted by Respondent by its failure to answer the Complaint;
3. Respondent shall cease and desist from continuing to employ aliens not authorized for employment in the United States after becoming aware that the alien is unauthorized for employment;
- 4 Respondent shall pay a civil money penalty of \$11,740.00; and
5. The notice of hearing in this case is canceled.

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 1999, I have served the foregoing Order Granting Complainant's Motion for Default Judgement on the following persons at the addresses shown, by first class mail, unless otherwise noted:

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